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17 and IMS Software Services, Ltd.

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 VEEVA SYSTEMS INC.,

22 Plaintiff,

23 v.

24 IQVIA INC. and IMS SOFTWARE
25 SERVICES, LTD.,

26 Defendants.
27

CASE NO. 3:19-CV-04137-WHA

**DEFENDANTS' NOTICE OF
MOTION AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS, STAY, OR TRANSFER**

Hearing Date: September 19, 2019

Hearing Time: 8:00 a.m.

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** at 8:00 a.m. on September 19, 2019 in Courtroom 12 –
 3 19th Floor of the United States District Court, Northern District of California, Defendants IQVIA
 4 Inc. and IMS Software Services, Ltd. (collectively, “Defendants” or “IQVIA”) will and hereby do
 5 move this Court for an order, pursuant to the first-to-file rule, dismissing, staying, or transferring
 6 this action in favor of substantially similar actions pending in the District of New Jersey, or in the
 7 alternative transferring this action to the District of New Jersey pursuant to 28 U.S.C. § 1404(a).

8 This Motion is made pursuant to the first-to-file rule of federal comity. *Pacesetter*
 9 *Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982); *Alltrade, Inc. v. Uniweld*
 10 *Prod., Inc.*, 946 F.2d 622, 623 (9th Cir. 1991). Where an action is commenced and there is
 11 already another case (here, two other cases) pending presenting similar issues between the same
 12 parties, principles of federal comity compel dismissal, stay, or transfer. Dismissal, stay, or
 13 transfer is appropriate because the earlier-filed New Jersey actions involve the same parties and
 14 involve issues that substantially overlap with the subject matter of the instant action. Dismissal,
 15 stay, or transfer of this action would also serve the interests of judicial economy.

16 This Motion is based on this Notice of Motion, the accompanying Memorandum of Points
 17 and Authorities in Support of the Motion; the Declaration of Stephen A. Broome; all other papers,
 18 documents or exhibits that may be filed in support of this Motion; and the arguments of counsel, if
 19 any, made before the Court at the hearing.

20
 21 Dated: August 15, 2019

QUINN EMANUEL URQUHART & SULLIVAN, LLP

22 By: /s/ Stephen A. Broome

23 Steig D. Olson

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 26 *Attorneys for Defendants IQVIA Inc. and IMS*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants IQVIA Inc. and IMS Software Services, Ltd. (collectively, “Defendants” or
4 “IQVIA”) move to dismiss, stay, or transfer this duplicative lawsuit in light of earlier-filed actions
5 pending in the District of New Jersey between the same parties that present substantially similar
6 issues. The first-to-file doctrine exists precisely to prevent the type of inefficient, duplicative
7 filing that Veeva has made here.

8 Since January 2017, IQVIA and Veeva have been litigating a substantially similar case in
9 the District of New Jersey: *IQVIA Inc. v. Veeva Sys. Inc.*, No. 17-cv-177 (D. N.J.) (“*New Jersey*
10 *I*”). In *New Jersey I*, IQVIA asserted claims against Veeva for, among other things, theft of
11 IQVIA’s trade secrets. Ex. A (*New Jersey I* Compl.) at ¶ 1.¹ In response, Veeva asserted a
12 number of antitrust and other counterclaims that turn on numerous legal and factual issues that are
13 virtually identical to those raised by Veeva’s antitrust claims here. In both *New Jersey I* and this
14 case, Veeva asserts that IQVIA violates the antitrust laws because IQVIA does not want to hand
15 over proprietary, protected information to Veeva—a direct competitor. IQVIA violates the
16 antitrust laws, on this theory, by refusing to grant Third Party Access (“TPA”) agreements
17 allowing the parties’ mutual customers to use IQVIA Sales Data and/or Reference Data in Veeva’s
18 technology offerings, which allegedly makes Veeva’s technology offerings less attractive. While
19 this claim is baseless and the antitrust laws impose no obligation on IQVIA to turn over its trade
20 secrets to a competitor, much less one with a demonstrated history of trade-secret theft, Veeva has
21 already spent over *two years* in *New Jersey I* conducting extensive (albeit fruitless) discovery of
22 the IQVIA TPA program that is at the heart of its claims in both that action and this one.

23 IQVIA also filed a second case, *IQVIA Inc. v. Veeva Sys. Inc.*, No. 19-cv-15517 (D. N.J.)
24 (“*New Jersey II*”), prior to the instant action. *New Jersey II* relates to a new Veeva technology

25
26 ¹ On November 6, 2017 the entity Quintiles IMS Incorporated changed its name to IQVIA
27 Inc. The case caption was amended to reflect this name change on December 20, 2017. *See* Ex. B
28 (Dec. 20, 2017 Order directing Clerk of Court to change case caption, Dkt. Entry No. 105 in 17-
cv-177 (D. N.J.)). All exhibit letters refer to exhibits attached to the Declaration of Stephen A.
Broome, filed concurrently herewith.

1 offering launched after *New Jersey I* was filed—an offering called Veeva Nitro—but raises a
 2 number of identical legal and factual issues as *New Jersey I*. In *New Jersey II*, IQVIA asks the
 3 Court to declare that, as a matter of law, IQVIA is not liable under antitrust or any other laws for
 4 refusing to sign TPA agreements allowing Veeva to ingest IQVIA data into Veeva’s technology
 5 offerings. Thus, *New Jersey II*, even more than *New Jersey I*, has complete overlap with the
 6 instant action. If granted, the declaration that IQVIA has requested would resolve most of the
 7 claims that Veeva has asserted in all three actions.

8 For reasons of efficiency, judicial economy, and to avoid the material risk of inconsistent
 9 outcomes, the parties’ recent dispute about Veeva Nitro should be heard by the same Court that
 10 has been adjudicating the same parties’ substantially similar dispute regarding the same alleged
 11 refusal by IQVIA to turn over its trade-secret protected information to Veeva, a competitor, for
 12 over two and a half years.

13 Moreover, because IQVIA filed both *New Jersey I* and *New Jersey II* before Veeva filed
 14 this case, the well established first-to-file rule compels dismissal, a stay, or transfer. Doing so will
 15 prevent unnecessary expenditure of judicial and party resources, eliminate the risk of inconsistent
 16 rulings, and promote the efficient adjudication of issues by the court that has already overseen the
 17 litigation between these parties for more than two and a half years.

18 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

19 *New Jersey I* was filed on January 10, 2017 and has been actively litigated ever since. *New*
 20 *Jersey II* was filed on July 17, 2019. *New Jersey I* been continuously presided over by the Hon.
 21 Claire C. Cecchi (D.J.) and the Hon. Mark Falk (M.J.) in the District of New Jersey, with the aid
 22 of a special discovery master (Judge Cavanaugh (Ret.)), and a Court-appointed mediator (Judge
 23 Hochberg (Ret.)). Both actions predate the above-captioned action. *New Jersey II* has likewise
 24 been assigned to Judge Cecci and Magistrate Judge Falk.

25 **A. The Claims and Counterclaims in *New Jersey I***

26 *New Jersey I* centers on Veeva’s theft and misuse of IQVIA’s confidential and proprietary
 27 market research offerings. Ex. A (*New Jersey I* Compl.) at ¶ 73. IQVIA invests substantial
 28 resources into developing these market research offerings, which combine healthcare data, market

1 research, and proprietary analytics. *Id.* at ¶ 17. IQVIA provides these offerings to clients in the
 2 life sciences industry. Under certain circumstances, IQVIA has agreed to allow its clients to share
 3 information from IQVIA’s market research offerings with third-party vendors who provide
 4 services to IQVIA’s clients. *Id.* at ¶ 52. When a client wishes to share IQVIA’s information with
 5 a third-party vendor, and if IQVIA agrees to share that information, IQVIA and the vendor enter
 6 into a Third Party License Agreement (“TPA Agreement”) that acknowledges the confidential and
 7 proprietary nature of the shared information and limits the ways the vendor may use that
 8 information. *Id.* at ¶¶ 53-58. Veeva is one such third-party vendor, with whom IQVIA has
 9 entered into more than 50 TPA Agreements. *Id.* at ¶ 68. IQVIA maintains that Veeva has, in
 10 violation of these agreements, improperly used IQVIA’s information to improve its own
 11 commercial products in an attempt to gain an unfair competitive advantage over IQVIA. *Id.* at
 12 ¶¶ 73, 74, 87, 119.

13 Veeva’s counterclaims in *New Jersey I* allege that the steps IQVIA has taken to protect its
 14 data offerings constitute monopolistic behavior. Many of Veeva’s allegations in support of that
 15 claim involve the TPA Agreement process. For example, Veeva claims, *inter alia*, that IQVIA
 16 “abuse[s]” the TPA Agreement process to prevent customers from switching from IQVIA’s
 17 products. Ex. D (March 3, 2017 *New Jersey I* Ans. and Countercl.) at 47, ¶ 98. Veeva also claims
 18 that IQVIA’s data security concerns are mere “pretexts” for anticompetitive practices. *Id.* at 45,
 19 ¶ 90. At bottom, no matter how they are dressed up in antitrust jargon, Veeva’s antitrust claims
 20 boil down to the assertion that IQVIA must allow Veeva, a direct competitor who IQVIA has sued
 21 for trade secret theft, access to IQVIA’s trade secrets. IQVIA, of course, disputes that the antitrust
 22 laws impose any such obligations.

23 **B. Proceedings in the District Court of New Jersey To Date**

24 The United States District Court for the District of New Jersey has heard and ruled on
 25 dozens of motions in *New Jersey I* between Defendants and Veeva. Notably, early on in the case,
 26 Veeva moved to have it transferred to this District. Dkt No. 11. That motion was *denied* more
 27 than two years ago. *Quintiles IMS Incorporated v. Veeva Systems, Inc.*, 2017 WL 2766166 at *1
 28 (D. N.J. June 23, 2017). After weighing a “comprehensive list” of the public and private concerns

1 implicated by 28 U.S.C. § 1404(a), the court held that the selection of New Jersey as forum was
 2 “eminently reasonable,” and that the case “belongs in New Jersey.” *Id.* at *2, *3, *6. The court
 3 made specific findings about “substantial and meaningful connections between [IQVIA], New
 4 Jersey, and this case,” noted that “many, if not all, of the claims may have accrued in New Jersey,”
 5 and found that IQVIA “would incur palpable inconvenience if the matter was transferred away
 6 from New Jersey to California” in light of its limited California contacts. *Id.* at *4-5. The court
 7 reached a straightforward conclusion: “[t]he indisputable reality is no legal or factual basis to
 8 send this case across the Country has been shown.” *Id.* at *5.

9 Several months later, Veeva’s moved to dismiss IQVIA’s complaint, and again the court
 10 ruled for IQVIA. *Quintiles IMS Incorporated v. Veeva Systems, Inc.*, 2017 WL 4842377 at *6 (D.
 11 N.J. Oct. 26, 2017). The following year, IQVIA’s motion to dismiss Veeva’s counterclaims was
 12 denied, as well. *Iqvia Inc. v. Veeva Sys. Inc.*, 2018 WL 4815547, at *6 (D. N.J. Oct. 3, 2018).

13 In the wake of these rulings, discovery has been proceeding in earnest. Millions of
 14 documents have been exchanged. Forty-two depositions have been taken so far, and seven more
 15 are noticed or pending. The District Judge and Magistrate Judge sitting in the District of New
 16 Jersey have overseen these discovery efforts with the aid of Special Master, Judge Cavanaugh
 17 (Ret.) who has repeatedly been called on to decide disputes and modify schedules to reflect the
 18 complex nature of the case and the corresponding voluminous record at issue. There have been
 19 well over a dozen hearings and scheduling conferences over the last two years. And in light of the
 20 complexity of the subject matter, Veeva even presented a tutorial on the relevant technology for
 21 the special master. Ex. I (Feb. 21, 2018 Veeva Technology Tutorial). The Court has also
 22 appointed a mediator, Judge Hochberg (Ret.), to oversee mediation efforts. Without a doubt, the
 23 investment of judicial resources to date—by no fewer than four judges—has been immense.

24 **C. Veeva’s Proposed New Counterclaims And IQVIA’s Response**

25 Two months ago, in connection with a routine status conference, Veeva informed the
 26 special master appointed by the New Jersey court that it wished to amend its counterclaims to “add
 27 allegations regarding IQVIA’s exclusionary conduct, directed at customers, to prevent them from
 28

1 using Veeva’s commercial data warehouse product” (Veeva Nitro)—the same subject and product
 2 as in this case. *See* Ex. E (June 3, 2019 Ltr. from Veeva to Hon. Dennis M. Cavanaugh (Ret.)).

3 In its own words, Veeva characterized its claims as “another example of the same kind of
 4 antitrust, anticompetitive behavior that we alleged [in 2017] with respect to our Master Data
 5 Management product.” Ex. G (Tr. of June 4, 2019 Status Conf.) at 13:1-3. Veeva argued that
 6 adding these counterclaims about the “Nitro” software product would not “cause any extensive
 7 delay.” *See* Ex. G at 14:3-7. Veeva also stated that its proposed amended counterclaims would
 8 not require significant additional discovery, in part because of their overlap with the existing
 9 litigation: they raised “the same set of problems [as were raised] with respect to the data product
 10 and the Master Data Management”—*i.e.*, as in their prior counterclaims. *Id.* at 15:3-5. Veeva
 11 assured the New Jersey court that the contemplated new, Nitro counterclaims involved “the same
 12 set of facts” and “the same type of behavior” as its existing claims. *Id.* at 17:15-16.

13 And indeed, a review of the draft of the proposed anti-competition counterclaims provided
 14 by Veeva to IQVIA makes clear that the proposed counterclaims sought to allege little more than
 15 an updated version of the allegation of anticompetitive conduct by IQVIA already at issue in *New*
 16 *Jersey I.* *See, e.g.*, Ex. F (Second Amended Complaint redline dated June 1, 2019) at 27, ¶ 3
 17 (“Veeva now amends its Counterclaims further to address IQVIA’s more recent anticompetitive
 18 acts in the life sciences Data Warehouse software market”). *See also id.* at 29, ¶ 8 (adding
 19 allegations about IQVIA’s use of “the same anticompetitive tactics” in a more recent time frame).
 20 The conduct that formed the basis of Veeva’s existing, pending counterclaims concerning Master
 21 Data Management (or “MDM”) software was alleged in Veeva’s draft to also apply to an
 22 additional, new software program called “Nitro.” *See id.* at 58 ¶ 140 (“Just as IQVIA’s purported
 23 data security concerns are pretextual and invalid with respect to Veeva’s Network MDM software,
 24 they are pretextual and invalid with respect to Nitro.”). Veeva alleged that in the fall of 2018
 25 “IQVIA began blocking customers from using the IQVIA data they had purchased on Veeva’s
 26 Nitro platform,” a “life sciences Data Warehouse software program.” *Id.* at 32-33 ¶ 8.

27 The Special Master reserved judgment on whether to permit amendment, awaiting an
 28 actual filing. Weeks passed, and Veeva did nothing. Following the conference, IQVIA heard

1 nothing further about Veeva’s proposed counterclaims for more than a month until on July 9,
 2 2019, Veeva informed IQVIA that it would *not* be filing its proposed counterclaims. *See* Ex. H
 3 (July 7, 2019 E-mail from S. Benz) (“Please be informed that Veeva has decided not to seek an
 4 amendment of its Counterclaims.”). Veeva gave no indication that it intended to file the Nitro
 5 claims as a separate case, or whether it intended to file the claims by a certain date.

6 However, Veeva continued to malign IQVIA as a monopolist in discovery in *New Jersey I*.
 7 For example, Veeva repeatedly asked IQVIA witnesses during depositions in *New Jersey I* about
 8 Veeva Nitro—*i.e.*, the product at the heart of its proposed amended counterclaims.² To clear its
 9 name and resolve the issue once and for all, IQVIA filed *New Jersey II* on July 17, 2019, in the
 10 United States District Court for the District of New Jersey, the same court in which IQVIA and
 11 Veeva’s antitrust and misappropriation dispute has been actively litigated for more than two years.
 12 IQVIA’s complaint seeks a declaration that IQVIA is not required by any laws to turn over its
 13 trade secrets to a competitor with a demonstrated history of stealing trade secrets, while hiding
 14 evidence of its misconduct and smearing IQVIA’s name in the marketplace.

15 The very next day, Veeva ran into this District and filed this action. Mirroring the
 16 allegations made in their contemplated counterclaims in *New Jersey I*, Veeva alleges that IQVIA
 17 violates the antitrust and other laws by not providing its trade secrets to Veeva under its TPA
 18 process. *See* Compl. at ¶¶ 7-10. Veeva seeks to hold IQVIA liable under the Sherman Act,
 19 Compl. at ¶¶ 160, 167, 173, 179, the same subject on which IQVIA has already sought a
 20 declaratory judgment in *New Jersey II*. *See* Ex. C (*New Jersey II* Compl.) at ¶¶ 103-05.
 21 Significant portions of Veeva’s complaint in the instant action overlap with its proposed second
 22 amended counterclaims, which it acknowledged in open court were inextricably bound up with the
 23 ongoing litigation.

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 25
 26
 27 ² A data warehouse is an information technology system that exchanges data with one or
 28 more computer applications within a client organization to support analysis and reporting for that
 specific client organization.

1 **III. ARGUMENT**

2 **A. Under the First-to-File Rule, This Action Should be Dismissed, Stayed, or**
 3 **Transferred to the District of New Jersey**

4 The first-to-file rule is a well established doctrine of federal comity that allows a district
 5 court to dismiss, stay, or transfer an action when a similar complaint is on file in another federal
 6 district. *Alltrade, Inc. v. Uniworld Prods., Inc.*, 946 F.2d 622, 623 (9th Cir. 1991). *See also*
 7 *Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d 1289, 1293 (N.D. Cal. 2013) (“When
 8 found to be applicable, the [first-to-file] rule gives courts the power to transfer, stay, or dismiss the
 9 case.”). The rule serves to avoid “duplicative lawsuits” and its “sole purpose is to promote judicial
 10 efficiency.” *Tria Beauty, Inc. v. Oregon Aesthetic Techs., Inc.*, 2011 WL 13253662, at *2 (N.D.
 11 Cal. Mar. 10, 2011) (Alsup, J.).

12 The first-to-file rule “should not be disregarded lightly. When applying the first-to-file
 13 rule, courts should be driven to maximize economy, consistency, and comity.” *Kohn Law Grp.,*
 14 *Inc. v. Auto Parts Mfg. Mississippi, Inc.*, 787 F.3d 1237, 1239-40 (9th Cir. 2015). “[U]nless
 15 compelling circumstances justify departure from the rule, the first-filing party should be permitted
 16 to proceed without concern about a conflicting order being issued in the later-filed action.” *Guthy-*
 17 *Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc.*, 179 F.R.D. 264, 269 (C.D. Cal. 1998). This
 18 “doctrine is designed to avoid placing an unnecessary burden on the federal judiciary, and to avoid
 19 the embarrassment of conflicting judgments. Comity works most efficiently where previously-
 20 filed litigation is brought promptly to the attention of the district court, and the court defers.”
 21 *Church of Scientology of Cal. v. U.S. Dep’t of Army*, 611 F.2d 738, 750 (9th Cir. 1979) (internal
 22 citation omitted). Here, dismissal, stay, or transfer would promote efficiency by avoiding
 23 duplicative litigation and potentially conflicting rulings on similar or identical issues that arise
 24 from the same factual circumstances.

25 “Courts analyze three factors in determining whether to apply the first-to-file rule:
 26 (1) chronology of the actions; (2) similarity of the parties; and (3) similarity of the issues.”
 27 *Wallerstein v. Dole Fresh Vegetables, Inc.*, 967 F. Supp. 2d 1289, 1293 (N.D. Cal. 2013).
 28 “Absent an exception to the first-to-file rule, a court of second-filing will defer to a court of first-

1 filing, if the two matters before them exhibit chronology, identity of parties, and similarity of
 2 issues.” *Intersearch Worldwide, Ltd. V. Intersearch Grp., Inc.*, 544 F. Supp. 2d 949, 957 (N.D.
 3 Cal. 2008).

4 “[T]he first-to-file rule does not require exact identity of the parties; rather, it requires only
 5 substantial similarity of parties. Likewise, the issues in the earlier-filed case need only be
 6 substantially similar to those in the subsequent case, a requirement that is met when there is
 7 substantial overlap between the two suits.” *Vado v. Champion Petfoods USA, Inc.*, 2019 WL
 8 634644, at *5 (N.D. Cal. Feb. 14, 2019). *See also Tria Beauty*, 2011 WL 13253662, at *2 (Alsup,
 9 J.) (“The two actions need not be identical; it is enough that they are ‘substantially similar.’”).
 10 The need for precise identity of issues is less where dismissal, stay, or transfer will “promote
 11 efficiency” and “avoid duplicative litigation.” *See Inherent.com v. Martindale-Hubbell*, 420 F.
 12 Supp. 2d 1093, 1099 (N.D. Cal. 2006) (transferring case under first-to-file doctrine where
 13 resolution of later-filed claims in California would “be intimately intertwined with the factual and
 14 legal considerations” underlying related claims pending in New Jersey).

15 Because this action presents the same issues as the earlier-filed *New Jersey II* commenced
 16 in the District of New Jersey, and both of the recently-filed cases are closely intertwined with the
 17 long-pending *New Jersey I*, the issues raised by all three cases should be litigated together in the
 18 same forum to preserve judicial and party resources, avoid inconsistent rulings, and promote
 19 efficient adjudication. Coordinated litigation can be achieved by complete dismissal of the instant
 20 action, a stay pending resolution of the New Jersey cases, or transfer so that this action can
 21 managed by the same Court presiding over the other cases.

22 The decision to dismiss, stay, or transfer an action under the first-to-file rule is within the
 23 Court’s discretion. Dismissal is often appropriate where the earlier filed action presents the same
 24 or similar issues. *See, e.g., Minor v. Sotheby’s Inc.*, 2009 WL 55589, *1 (N.D. Cal. Jan. 7, 2009)
 25 (dismissing second-filed action where the issues and were substantially similar and there was no
 26 showing that prejudice would result from dismissal of later action); *Intersearch Worldwide*, 544 F.
 27 Supp. 2d at 963 (dismissing later-filed action where claims would be resolved by the first-filed
 28 action). “A district court has the inherent power to stay its proceedings. This power to stay is

1 incidental to the power inherent in every court to control the disposition of the causes on its docket
 2 with economy of time and effort for itself, for counsel, and for litigants.” *Gustavson v. Mars, Inc.*,
 3 2014 WL 6986421, at *2 (N.D. Cal. Dec. 10, 2014) (citation and internal quotation marks
 4 omitted). Transfer is also proper where, as here, “the court of first filing provides adequate
 5 remedies.” *Intersearch Worldwide*, 544 F. Supp. 2d at 963.

6 **1. The New Jersey Actions Were Filed Before the Instant Action**

7 Both New Jersey cases indisputably predate the instant action. *New Jersey I* has been
 8 pending for over 54 months. *New Jersey II* was filed the day before Veeva filed this action.

9 That Veeva came in and filed its action only one day after one of the prior actions does not
 10 change the outcome. Courts have rejected attempts to create arbitrary exceptions to the first-to-
 11 file rule, which “should not be disregarded lightly.” *Kohn*, 787 F.3d at 1239. Indeed, courts have
 12 applied the first-to-file rule in instances where there were only two competing cases and they were
 13 filed even closer in time. *See, e.g., Intuitive Surgical, Inc. v. Cal. Inst. of Tech.*, 2007 WL
 14 1150787, at *2-3 (N.D. Cal. Apr. 18, 2007) (“The central question is whether the first-to-file rule
 15 applies when two actions are filed a few hours apart. . . . The Court finds that the first-to-file rule
 16 is applicable and requires deference to the first-filed court, notwithstanding the near simultaneous
 17 nature of the filings.”); *Beverly Jewerly Co., Ltd. v. Tacori Enterprises*, 2006 WL 3304218, *4
 18 n.3 (N.D. Ohio 2006) (applying first-filed rule to cases filed on the same day); *Nature’s Way*
 19 *Prod., Inc. v. Zila Nutraceuticals, Inc.*, 2006 WL 2883205, at *1 (D. Utah Oct. 5, 2006) (applying
 20 first-to-file rule to cases filed less than two hours apart).

21 **2. The Parties Are the Same in This Action and the New Jersey Actions**

22 The second factor—similarity of the parties—is also satisfied. It is indisputable that the
 23 parties in the two New Jersey cases and those in the instant actions are not just similar, but
 24 identical. *Compare, e.g.,* Dkt. Entry No. 1, at ¶¶ 14-26 (listing parties as Veeva, IQVIA, and IMS
 25 Software Services, Ltd.), *with* Ex. C (*New Jersey II* Compl.) at ¶¶ 17-22 (same).

1 **3. *The Issues in This Action Are Substantially Similar to Those Presented in***
2 ***the New Jersey Actions***

3 The three lawsuits arise from the same factual allegations and present many of the same
4 legal issues. Allowing this action to proceed in parallel with either or both of the New Jersey
5 cases would present a very real risk of conflicting, inconsistent rulings.

6 In *New Jersey I*, Veeva’s counterclaims assert that IQVIA violates the antitrust laws
7 because IQVIA refuses to give Veeva proprietary, protected information.

8 *New Jersey II (IQVIA Inc. v. Veeva Sys. Inc., No. 19-cv-15517 (D. N.J.))* and this case
9 squarely raise the same legal issues (between the same parties) as *New Jersey I*, just in the context
10 of a new product. *New Jersey II* puts the issue as follows: whether “IQVIA is liable under the
11 Sherman Act, any other federal antitrust law, or the laws of the states of New Jersey or California
12 based on IQVIA’s commercial business decision not to license Veeva to use IQVIA’s proprietary
13 and commercially sensitive trade secrets.” *See Ex. C (New Jersey II Compl.)* at ¶ 104. *See also*
14 *Dkt. Entry No. 1 ¶¶ 2-13, 159-212.*

15 IQVIA’s own trade-secret claims in *New Jersey I* (filed in early 2017) are also closely
16 intertwined with both actions. IQVIA alleges that “Veeva stole confidential and proprietary
17 information” from IQVIA. *Ex. A (New Jersey I Compl.)* at ¶ 1. IQVIA’s decision to not license
18 Veeva’s use of IQVIA’s intellectual property—the supposedly anticompetitive conduct that forms
19 the basis of this case—arose from concerns that Veeva would “misuse that data” or fail to stop
20 others from misusing it. *See id.* at ¶ 119. In other words, Veeva’s misuse of the relevant data
21 forms, in part, the basis of *New Jersey I*, and is being actively litigated, satisfying the “substantial
22 similarity” standard. *See Tria Beauty*, 2011 WL 13253662, at *2 (Alsup, J.) (finding substantial
23 similarity in first-to-file analysis where the “claims in both suits arise from the same underlying
24 facts”). IQVIA’s allegations in *New Jersey I* would, if proven, establish a defense to Veeva’s new
25 claims in this District and entitle IQVIA to relief in the earlier-filed *New Jersey II*. *See Ex. C*
26 *(New Jersey II Compl.)* at ¶ 1 (“IQVIA is not required by the antitrust laws to turn over its
27 valuable proprietary information and trade secrets to a direct competitor with a demonstrated track
28 record of stealing these same trade secrets.”).

Veeva’s claims in this District largely parrot its original antitrust counterclaims asserted (and sustained against IQVIA’s motion to dismiss) in *New Jersey I*. In both cases, Veeva alleges that IQVIA “is abusing its monopoly power . . . preventing Veeva and other competitors from providing data products and software application to life sciences companies.” *See* Ex. D (*New Jersey I* Ans. & Countercl.) at 23 ¶ 1. There is a strong resemblance between this allegation from 2017 and Veeva’s current action. *See* Compl. ¶ 2 (“IQVIA exploits its Reference Data and Sales Data monopolies to maintain or enhance those monopolies, and to expand its market power into the life sciences commercial data warehouse (‘CDW’) market.”). The means of this supposed anticompetitive conduct is the same in both cases: IQVIA allegedly “block[s] those paying customers from using IQVIA’s Reference Data and Sales Data with Veeva software” by refusing to approve Third Party Access (TPA) agreements with them. Compl. ¶ 6. *Compare with* Ex. D at 24 ¶ 2 (alleging that IQVIA is “refusing customer requests to use [IQVIA] Reference Data products with Veeva’s MDM software product”).³ Veeva has been actively pursuing discovery about Veeva Nitro in *New Jersey I*, having asked about data warehouse topics in many depositions in the litigation (Nitro is commercial data warehouse software). In fact, Veeva has already questioned at least 9 witnesses on the topic of its Nitro product and TPA-related issues relevant to the parties’ dispute concerning Nitro.⁴ That Veeva has been seeking to elicit evidence in *New Jersey I* about the same anticompetitive conduct alleged in this case (including concerning the specific product at issue) speaks volumes about the inefficiency of allowing this case to proceed in parallel alongside the New Jersey actions.⁵

³ The allegations between the two actions parrot one another, often word for word. *Compare, e.g.,* Compl. ¶ 10 *with* Ex. D (March 3, 2017 *New Jersey I* Ans. and Countercl.) at 25 ¶ 5, Compl. ¶ 11 *with* Ex. D at 25 ¶ 4, Compl. ¶ 94 *with* Ex. D at 38 ¶ 61, Compl. ¶ 108 *with* Ex. D at 40 ¶ 67.

⁴ The protective order in place in *New Jersey I* prevents IQVIA from attaching or specifically quoting the relevant passages of these depositions. But again, the fact that the protective order in *New Jersey I* covers Veeva’s discovery into the same circumstances that form the basis of its claims in this Court proves that this case belongs in New Jersey.

⁵ The fact that Veeva’s Nitro claims require some new discovery does not undermine the obvious connection between Veeva’s old and new claims or the powerful efficiencies of litigating the new claims in New Jersey.

1 The only difference between *New Jersey I* and the new suit in this Court is simply the type
 2 of Veeva software at issue. In *New Jersey I*, Veeva has long alleged that IQVIA users of the
 3 Veeva Network product should have access to IQVIA’s Reference and Sales Data, and
 4 contemplated the same claim as to its Nitro product. In this action, the same allegations are
 5 asserted with regard Nitro. *See* Compl. ¶¶ 99, 105, 108. Because of this extensive overlap, Veeva
 6 even references its own counterclaims in *New Jersey I* as support for its allegations in this case.
 7 *See* Compl. ¶¶ 99-104. Veeva thus alleges that IQVIA knew that its actions against Nitro “would
 8 succeed because it had already deployed them in the life sciences MDM software market to block
 9 Veeva Network.” Compl. ¶ 108. Veeva also makes clear that IQVIA’s explanation for its refusal
 10 to share its proprietary data is the same for each type of software: concerns about safeguarding
 11 “IQVIA’s intellectual property.” *Compare* Compl. ¶ 115 with Ex. D at 44, ¶ 83 (alleging that
 12 IQVIA’s “security concerns were not genuine”). The same security concerns are at the center of
 13 IQVIA’s claims against Veeva in *New Jersey I*.

14 Finally, as discussed above, Veeva has admitted that the Nitro-focused claims presented in
 15 this action are merely “another example of the same kind of antitrust, anticompetitive behavior” it
 16 already asserted in its counterclaims against IQVIA in early 2017, that they raise “the same set of
 17 problems [as were raised] with respect to the data product and the Master Data Management” (*i.e.*,
 18 as in the earlier counterclaims), and that they involve “the same set of facts” and “the same type of
 19 behavior” as Veeva’s existing claims. *See* Ex. G at 13:1-3, 15:3-5, 17:15-16.

20 **4. New Jersey II is Not An Anticipatory Suit**

21 The fact that *New Jersey II* was filed one day earlier than the instant action does not render
 22 it “anticipatory” for purposes of this analysis. In fact, the opposite appears to be true: Veeva’s
 23 new suit is “reactionary.” “A suit is ‘anticipatory’ for the purposes of being an exception to the
 24 first-to-file rule if the plaintiff in the first-filed action filed suit on receipt of *specific, concrete*
 25 *indications* that a suit by the defendant was imminent.” *Tria Beauty*, 2011 WL 13253662, at *2
 26 (Alsup, J.) (emphasis in original) (internal quotation marks omitted). *See also BizCloud, Inc. v.*
 27 *Computer Scis. Corp.*, 2014 WL 1724762, at *2 (N.D. Cal. Apr. 29, 2014) (same). Here, there
 28 were no “specific, concrete” indications that a suit by Veeva was imminent. Far from it: Veeva

1 told the New Jersey court (and IQVIA) that it wanted to file amended counterclaims in
2 (appropriately) New Jersey, and then, for six weeks, did nothing.

3 As the terms suggest, the standard of “specific” and “concrete” indications of an
4 “imminent” suit is a demanding one. Thus, for example, “a letter which suggests the possibility of
5 legal action, however, in order to encourage or further a dialogue, is not a specific, imminent
6 threat of legal action.” *Intersearch Worldwide*, 544 F. Supp. 2d at 960 (internal quotation marks
7 omitted). Nor is a “reasonable apprehension” of a controversy the same as an imminent threat of
8 litigation. *Id.* See also *Tria Beauty*, 2011 WL 13253662, at *3 (Alsup, J.) (granting defendant’s
9 motion to stay under first-to-file rule and holding that declaratory judgment action filed first by
10 four days was not anticipatory where cease-and-desist letter from plaintiff told defendant that it
11 “will proceed accordingly”).

12 The mere fact that an action seeks a declaratory judgment does not cause the first-to-file
13 rule to apply with less force. See *Holmes Grp., Inc. v. Hamilton Beach/Proctor Silex, Inc.*, 249 F.
14 Supp. 2d 12, 15 (D. Mass. 2002) (“where two identical actions are pending concurrently in two
15 federal courts, the first-filed action is generally preferred, even if it is a request for a declaratory
16 judgment”).⁶ When considering claims that a declaratory judgment suit is entitled to less
17 deference than any other action, courts look to whether “a party engaged in bad faith conduct, by
18 inducing an opposing party to delay filing of a lawsuit, so that he could file a preemptive lawsuit.”
19 *Doubletree Partners, L.P. v. Land Am. Am. Title Co.*, 2008 WL 5119599, at *3 (N.D. Tex. Dec. 3,
20 2008). There is nothing like that here.

21 IQVIA learned that Veeva planned to assert counterclaims concerning its “Nitro” product
22 in June 2019, when it sought to amend its counterclaims in *New Jersey I*. After the district court
23 reserved judgment, Veeva did not raise plans to assert its contemplated counterclaims again in any
24 setting, formal or otherwise. In fact, Veeva informed IQVIA that it would *not* be filing its

25 ⁶ See also, e.g., *W. Pac. Signal, LLC v. Trafficware Grp., Inc.*, 2018 WL 3109809, at *5-6
26 (N.D. Cal. June 25, 2018) (applying first-to-file rule where first action was for declaratory
27 judgment); *Barnes & Noble, Inc. v. LSI Corp.*, 823 F. Supp. 2d 980, 992 (N.D. Cal. 2011) (same);
28 *Sony Computer Entm’t Am. Inc. v. Am. Med. Response, Inc.*, 2007 WL 781969, at *4 (N.D. Cal.
Mar. 13, 2007) (same).

1 proposed counterclaims, and gave no indication—clear or otherwise—that it intended to file those
 2 claims as a separate case elsewhere. *See* Ex. H (July 7, 2019 E-mail from S. Benz) (“Please be
 3 informed that Veeva has decided not to seek an amendment of its Counterclaims.”).

4 IQVIA thus had *zero* actual, concrete notice of an imminent filing. IQVIA had
 5 “reasonable apprehension of a legal controversy”—thus, the declaratory judgment action—but that
 6 falls well short of the requisite “direct threat of imminent litigation.” As this Court has observed,
 7 if the possibility of litigation were sufficient to render a suit anticipatory, then “each time a party
 8 sought declaratory judgment in one forum, a defendant filing a second suit in a forum more
 9 favorable to defendant could always prevail under the anticipatory filing exception.” *See Tria*
 10 *Beauty*, 2011 WL 13253662, at *3 (Alsup, J.). Veeva’s apparent effort to do just that should be
 11 rejected.

12 **5. The Equities Weigh In Favor of Dismissal, Stay, or Transfer**

13 When there are competing actions involving similar parties and issues, the court in which
 14 the earlier-filed action was initiated is the proper forum to assess the equities of the competing
 15 venues. *See Power Integrations, Inc. v. ON Semiconductor Corp.*, 2017 WL 1065334, at *3 (N.D.
 16 Cal. Mar. 21, 2017) (“[I]t is the court with the first-filed action that should normally weigh the
 17 balance of convenience and any other factors that might create an exception to the first-to-file
 18 rule.”) (internal quotation marks omitted); *Intuitive Surgical*, 2007 WL 1150787, at *2 (same).
 19 The conservation of scarce judicial resources also outweighs party convenience under the first-to-
 20 file doctrine. *See Glob. Music Rights, LLC v. Radio Music License Comm., Inc.*, 2017 WL
 21 3449606, at *7 (C.D. Cal. Apr. 7, 2017) (“Moreover, though it may be more convenient for
 22 Plaintiff to litigate here than in Pennsylvania, the first-to-file rule counsels that judicial efficiency
 23 generally outweighs the convenience of the parties.”).

24 Were the Court to nevertheless consider the equities as they apply to the parties, they
 25 weigh squarely against allowing this action to proceed. *First*, that the parties have been litigating,
 26 for more than two and a half years, misappropriation and related antitrust claims to this case in
 27 New Jersey weighs heavily in favor of dismissal. The New Jersey court is in the best position to
 28

1 address the substance of the allegations asserted in this case, as well as to determine the best
2 manner of case management.⁷

3 Indeed, “the pendency of an action in another district is important because of the positive
4 effects it might have in possible consolidation of discovery and convenience to witnesses and
5 parties.” *A. J. Indus., Inc. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 503 F.2d 384, 389 (9th Cir.
6 1974); *see also, e.g., Zurich Am. Ins. Co. v. DS Waters of Am., Inc.*, 2013 WL 12128686, at *3
7 (C.D. Cal. Mar. 18, 2013). Many employees and officers of “all parties in the instant action have
8 been deposed in [*New Jersey I*].” *Ben Chang v. Biosuccess Biotech, Co.*, 2014 WL 12703706, at
9 *3 (N.D. Cal. May 30, 2014). Even if discovery relating to Veeva’s antitrust claims in *New Jersey*
10 *I* is “not [] identical to the discovery in the instant case,” Veeva has already represented that “there
11 will be at least some overlap, which advances efficiency and convenience.” *See id.*; *accord* Ex. G
12 (Tr. of June 4, 2019 Status Conf.) at 14:2-7, 15:3-10, 17:15-16 (litigating the Nitro antitrust issues
13 would not “cause any extensive delay” because it raises “the same set of problems” as their prior
14 counterclaims” and is “the same set of facts,” and “the same type of behavior”). Given this
15 overlap, it is important to avoid the risk of “inconsistent rulings.” *See Ben Chang*, 2014 WL
16 12703706, at *3. Finally, the judges and special master overseeing the New Jersey litigation have
17 considerable familiarity with the issues, having adjudicated dozens of disputes about myriad
18 aspects of the case.

19 *Second*, convenience of the parties weighs heavily in favor of dismissal. This Court need
20 only look to the analysis conducted by the District Court of New Jersey which has *already decided*
21 that Veeva’s *antitrust counterclaims*, which raise—in Veeva’s own words—“the same set of
22 problems” as this case, are best adjudicated in New Jersey. *Quintiles IMS Inc. v. Veeva Sys., Inc.*,
23 2017 WL 2766166 (D. N.J. June 23, 2017).

24
25 ⁷ This Court need not determine the feasibility or desirability of consolidating this case with
26 either or both of the New Jersey Actions. Consolidation or coordination of these related matters
27 can take many forms and the precise manner of joint management should, respectfully, be
28 determined in the first instance by those judicial officers with years of familiarity with these
parties and the issues presented in the three cases.

1 The court found IQVIA’s “connections to New Jersey” to be “overwhelming.” *Id.* at *3.
 2 Among other things, IQVIA “conducts a significant portion of its business” there; has “four
 3 offices in New Jersey employing over 700 people, with one of its largest offices located in
 4 Parsippany totaling over 83,000 square feet”; “is home to certain members of [IQVIA]’s senior
 5 leadership team—including legal, finance, human resources, and corporate development” and its
 6 “major data center and employees with responsibilities for technology solutions.” *Id.* Veeva
 7 likewise has “admit[ted] to having dealings, meetings, and customers in New Jersey, as well as
 8 conducting substantial business in New York. In fact, Veeva has an office in Princeton, New
 9 Jersey, and employs approximately 65 individuals in this State that may relate to the products at
 10 issue in the case. Similarly, it appears that the entity responsible for Veeva’s competing health
 11 care data service is located in Fort Washington, Pennsylvania.” *Id.* at *5 (internal citations
 12 omitted). Moreover, Veeva’s complaint in this case makes clear that the issues in dispute involve
 13 the healthcare services industry, much of which is headquartered in New Jersey. As of 2017,
 14 “Veeva identifie[d] 77 clients on its website and 11 have their U.S. headquarters in New Jersey
 15 and another 10 have headquarters in Pennsylvania, Connecticut, New York or Delaware, while
 16 only 12 have headquarters in California.” *Id.* (internal citations and quotation marks omitted).
 17 And because both IQVIA and Veeva serve the same healthcare services industry in New Jersey
 18 the court noted the likelihood that “customers in and around the New Jersey area could be
 19 witnesses in the case.” *Id.* at *5. This statement that has been borne out by the subsequent
 20 litigation. The selection of the District of New Jersey was held to be “plainly appropriate” and the
 21 factual connection to New Jersey so strong that it “would *likely be more than sufficient to*
 22 *transfer the case to New Jersey if it had been filed in California.*” *Id.* at *4 (emphasis added).

23 The question of where this litigation belongs as of August 2019 is even more
 24 straightforward than the question of New Jersey or California in mid-2017, when Veeva’s motion
 25 to transfer was denied. At this point, “the proper inquiry is not whether [California] is more
 26 convenient than [New Jersey] in the abstract but instead whether sanctioning a second, nearly
 27 identical action here is more convenient” than dismissing, staying, or transferring the case. *See*
 28

1 *Wiley v. Gerber Prod. Co.*, 667 F. Supp. 2d 171, 173 (D. Mass. 2009). There is no question that
 2 litigating in one forum is more convenient than litigating in two.

3 In sum, the most appropriate forum for these actions is the District of New Jersey, where
 4 Veeva and IQVIA have been litigating Veeva's access to IQVIA's intellectual property for well
 5 over two years, and where both earlier-filed related cases are pending. The overlap in claims,
 6 parties, and evidence means that both this Court and Judge Cecchi would be presiding over
 7 litigation rife with potential for rulings that could duplicate or conflict with the other litigation if
 8 cases were allowed to proceed in parallel in both New Jersey and this District. *Cf. Tria Beauty*,
 9 2011 WL 13253662, at *4 (Alsup, J.) ("While the likelihood of dismissal in the first suit is
 10 unclear, an ounce of prevention is worth a pound of cure. This order errs on the side of caution in
 11 avoidance of duplicative litigation."). Avoiding such a scenario is the reason the first-to-file rule
 12 exists and is faithfully enforced. *See Inherent.com*, 420 F. Supp. 2d at 1097 (purpose of the first-
 13 to-file rule is to "promote efficiency and to avoid duplicative litigation"); *Wells v. Cingular*
 14 *Wireless LLC*, 2006 WL 2792432, at *3 (N.D. Cal. Sept. 27, 2006) (Alsup, J.) ("it is highly
 15 inefficient for this district to expend resources adjudicating a dispute virtually identical to one
 16 already pending in our sister district").⁸

17 **B. Transfer is Also Appropriate Pursuant to 28 U.S.C. § 1404(a)**

18 Under 28 U.S.C. § 1404(a), a case may be transferred from one federal district to another
 19 "[f]or the convenience of parties and witnesses, in the interest of justice" so long as the case
 20 "might have been brought" in the transferee district in the first instance. "The purpose of
 21 § 1404(a) is to prevent the waste of time, energy and money and to protect litigants, witnesses and
 22 the public against unnecessary inconvenience and expense." *King-Scott v. Univ. Med. Pharm.*
 23 *Corp.*, 2010 WL 1815431, at *1 (S.D. Cal. May 6, 2010). Each of these factors weighs in favor of
 24 transferring this action to the District of New Jersey.

25
 26 ⁸ If the Court elects to not dismiss or transfer the instant action, imposing a stay is also an
 27 option. Although not as efficient as the other remedies, a stay would prevent the cases from being
 28 litigated simultaneously on two separate fronts, which would all but guarantee duplicative efforts
 and risk inconsistent rulings.

1 “Courts undertake a two-step analysis to determine whether transfer is proper. First, courts
 2 determine whether the action could have been brought in the target district. The second step
 3 consists of an individualized, case-by-case consideration of convenience and fairness. A district
 4 court has discretion to adjudicate motions for transfer according to an individualized case-by-case
 5 consideration of convenience and fairness.” *K.H.B. by & through K.D.B. v. UnitedHealthcare Ins.*
 6 *Co.*, 2018 WL 4913666, at *2 (N.D. Cal. Oct. 10, 2018) (Alsup, J.) (internal quotation marks and
 7 citations omitted).

8 There is no reason that the instant action could not have been brought in New Jersey. The
 9 federal Clayton Act contains nationwide venue provisions. *See* 15 U.S.C. § 22. Moreover, a
 10 variety of equitable factors including the convenience of litigants and witnesses, considerations of
 11 judicial economy, the need to guard against inconsistent rulings, and other administrative
 12 considerations all demonstrate that New Jersey is the superior venue for the instant action, should
 13 it not be dismissed in its entirety. *See Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir.
 14 2000) (“Under § 1404(a), the district court has discretion to adjudicate motions for transfer
 15 according to an individualized, case-by-case consideration of convenience and fairness.”) (internal
 16 quotation marks omitted).

17 Perhaps most crucially in these circumstances, the multi-year history of *New Jersey I*
 18 makes clear that New Jersey is by far the most efficient venue for the issues raised by all three
 19 actions to be resolved. The parties’ dispositive briefing and extensive discovery motion practice
 20 there gives the District of New Jersey an intimate familiarity with the issues bound up in all three
 21 cases. This familiarity extends to the district judge, the magistrate judge, the special master, and
 22 the Court-appointed mediator. This prior knowledge weighs heavily in favor of transfer to New
 23 Jersey. *See, e.g., Cadenasso v. Metro. Life Ins. Co.*, 2014 WL 1510853, at *7-8 (N.D. Cal. Apr.
 24 15, 2014) (transferring case under § 1404(a) where first-filed court was familiar with the facts
 25 underlying subsequent action, and holding that first-to-file rule provided “strong” alternative basis
 26 for same result); *King-Scott v. Univ. Med. Pharm., Corp.*, 2010 WL 1815431, at *2 (S.D. Cal.
 27 May 6, 2010) (one factor in transfer determination is looking for “the court most familiar with the
 28 claims between parties”).

The “interest of justice” that § 1404(a) references includes concerns such as “ensuring speedy trials” and “trying related litigation together.” *Allstar Mktg. Grp., LLC v. Your Store Online, LLC*, 666 F. Supp. 2d 1109, 1134 (C.D. Cal. 2009). These factors clearly militate in favor of transfer to the District that is already overseeing substantially overlapping issues and has engaged with the substantive issues presented by the litigation. Also relevant to the “interest of justice” is the feasibility of consolidation with prior, related cases. *See Cardoza v. T-Mobile USA Inc.*, 2009 WL 723843, at *5 (N.D. Cal. Mar. 18, 2009) (“The feasibility of consolidation is a significant factor in a transfer decision, and even the pendency of an action in another district is important because of the positive effects it might have in possible consolidation of discovery and convenience to witnesses and parties.”). New Jersey, where a closely related action has been litigated since early 2017 provides unique benefits and important efficiencies by virtue of the ongoing litigation in that District. Once transferred, the New Jersey court—already knowledgeable about the relevant disputes, industry, and legal issues—can determine whether and the appropriate extent to which coordination between this case and *New Jersey I* and/or *New Jersey II* best serves the interests of judicial economy.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss this action in its entirety. In the alternative, Defendants request that the Court stay this action pending resolution of the New Jersey actions or transfer it to the District of New Jersey.

Dated: August 15, 2019

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